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E-filed on July 23, 2014

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8 **UNITED STATES DEPARTMENT OF JUSTICE**
9 Office of the United States Trustee
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14 **Attorneys for the United States Trustee for Region 17**
15 **TRACY HOPE DAVIS**

16 **UNITED STATES BANKRUPTCY COURT**

17 **DISTRICT OF NEVADA**

18 In re:

19 VIRGIN RIVER 140, LLC,

20 Case No: BK-S-13-14594-LED

21 Chapter 11

22 Debtor.

23 **THE UNITED STATES TRUSTEE'S EX PARTE MOTION FOR AN ORDER**
24 **DISMISSING CHAPTER 11 BANKRUPTCY CASE**

25 To the Honorable LAUREL E. DAVIS, United States Bankruptcy Judge:

26 Tracy Hope Davis, United States Trustee for Region 17 (“United States Trustee”), hereby
27 submits *The United States Trustee's Ex Parte Motion for An Order Dismissing Chapter 11*
28 *Bankruptcy Case* (“Motion”). This ex parte motion is authorized by the Court’s *Order of*
29 *Conditional Conversion or Dismissal* (“Order”), which the Court entered on March 26, 2014 and
30 which directs that “no later than July 22, 2014, Debtor will obtain a court order confirming a plan
31 of reorganization in the above captioned case.” [Docket No. 43 at 2 of 4, lns. 9-11].¹

¹ A true and correct copy of the order is attached hereto as “Exhibit A.”

The Order also provides that “if Debtor . . . fails to obtain a court order confirming a plan of reorganization in the above-captioned case by July 22, 2014, then cause to convert or dismiss this case shall have been conclusively established, the United States Trustee may file an *ex parte* motion and lodge an *ex parte* order with the Court to convert or dismiss this case, and this case shall be converted or dismissed without further notice or hearing.” [Docket No. 43 at 2 of 4, Ins. 16-23].

The Court's official docket for this case discloses that to date, Virgin River 140, LLC ("Debtor") has not obtained a Court order confirming a plan of reorganization, and Debtor has not scheduled a plan confirmation hearing in this case. Moreover, at a May 20, 2014 hearing in this case, Debtor's counsel acknowledged that there was no prospect for reorganization in this case. Accordingly, the United States Trustee moves the Court for an order dismissing this case pursuant to (1) the Order; and (2) 11 U.S.C. §§ 1112(b)(1), (b)(4)(E).²

The Motion is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

1. On May 24, 2013, Debtor filed a voluntary Chapter 11 petition with the Court. [Docket No. 1].
 2. On February 11, 2014, the United States Trustee filed a motion to dismiss (“Motion to Dismiss”) this case for cause under Sections 1112(b)(1), (b)(4)(F) & (b)(4)(K), citing Debtor’s failure to file operating reports, failure to pay fees required under 28 U.S.C. § 1930(a)(6), and failure prosecute the case. [See Docket No. 28].

² Hereafter, all references to “Section” in the Motion are to provisions of the Bankruptcy Code, 11 U.S.C. section 101 *et. seq.*, unless otherwise indicated. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

3. On March 26, 2014, the Court entered the Order. [Docket No. 43]. As recited above, the Order required Debtor to confirm a plan by a specific deadline, and Debtor has not done so. [Docket No. 43]. The Order also provides that Debtor's failure to comply with that deadline constitutes "cause to convert or dismiss this case," that cause to convert or dismiss is now "conclusively established," and that "this case shall be converted or dismissed without further notice or hearing." [Docket No. 43 at 2 of 4, lns. 16-23].

4. Cause to dismiss this case is also established under Sections 1112(b)(1) & 1112(b)(4)(E) because Debtor has “fail[ed] to comply with an order of the court.” 11 U.S.C. §§ 1112(b)(1), (b)(4)(E).

5. Accordingly, pursuant to the Order and pursuant to Sections 1112(b)(1) & (b)(4)(E), the United States Trustee respectfully submits that cause to dismiss this case is “conclusively established” and asks that the Court “dismiss[] [this case] without further notice or hearing.” [Docket No. 43 at 2 of 4, lns. 16-23].

WHEREFORE, for all of the foregoing reasons the United States Trustee requests that the Court enter an order dismissing this case and commanding such other relief as the Court deems just under the circumstances.

Dated: July 23, 2014

Respectfully Submitted,

TRACY HOPE DAVIS
UNITED STATES TRUSTEE

By: /s/ Jonas V. Anderson
Jonas V. Anderson, Esq.
Attorney for the United States Trustee

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3 **EXHIBIT A**
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Honorable Laurel E. Davis
United States Bankruptcy Judge



Entered on Docket
March 26, 2014

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TRACY HOPE DAVIS

18 **UNITED STATES BANKRUPTCY COURT**
19 **DISTRICT OF NEVADA**

20 In re:

21 VIRGIN RIVER 140, LLC,

22 Debtor.

Case No: BK-S-13-14594-LED

Chapter 11

Date: March 18, 2014

Time: 10:30 a.m.

Place: LED-Courtroom 3, Foley Federal Bldg.

25 **ORDER OF CONDITIONAL CONVERSION OR DISMISSAL**

27 Based on the *Motion of the Acting United States Trustee, Pursuant to 11 U.S.C. §*
28 *1112(b) and Federal Rules of Bankruptcy Procedure 1017(f) and 9014, to Dismiss Chapter 11*

1 Case [Docket No. 28], the hearing held on March 18, 2014 (appearances noted on the record),
2 the Court having stated on the record its findings of fact and conclusions of law, which are
3 incorporated herein pursuant to Federal Rules of Bankruptcy Procedure 9014(c) and 7052, and
4 Federal Rule of Civil Procedure 52, with good cause having been shown,
5

6 **IT IS HEREBY ORDERED** that no later than April 18, 2014, Virgin River 140, LLC
7 ("Debtor") shall file a disclosure statement and plan of reorganization in the above-captioned
8 case; and

9 **IT IS FURTHER ORDERED** that no later than July 22, 2014, Debtor will obtain a
10 court order confirming a plan of reorganization in the above captioned case; and
11

12 **IT IS FURTHER ORDERED** that during the pendency of this case Debtor shall (a)
13 timely file all monthly operating reports—including relevant bank and financial statements;
14 and (b) timely pay all U.S. Trustee fees, pursuant to 28 U.S.C. § 1930(a)(6); and

15 **IT IS FURTHER ORDERED** that if Debtor (1) fails to file a disclosure statement and
16 plan of reorganization in the above-captioned case by April 18, 2014; **OR** (2) fails to obtain a
17 court order confirming a plan of reorganization in the above-captioned case by July 22, 2014,
18 then cause to convert or dismiss this case shall have been conclusively established, the United
19 States Trustee may file an *ex parte* motion and lodge an *ex parte* order with the Court to
20 convert or dismiss this case, and this case shall be converted or dismissed without further
21 notice or hearing; and
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23 **IT IS FURTHER ORDERED** that if at any time during the pendency of this case
24 Debtor (a) fails to timely file a monthly operating report—including relevant bank and
25 financial statements; **OR** (b) fails to timely pay U.S. Trustee fees, pursuant to 28 U.S.C. §
26 1930(a)(6), and if Debtor does not cure such failure within fifteen (15) days of delivery of
27 notice from the Office of the United States Trustee, then cause to convert or dismiss this case
28

1 shall have been conclusively established, the United States Trustee may file an *ex parte* motion
2 and lodge an *ex parte* order with the Court to convert or dismiss this case, and this case shall be
3 converted or dismissed without further notice or hearing.
4

5 Submitted by:
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7 **TRACY HOPE DAVIS**
8 **UNITED STATES TRUSTEE REGION 17**

9 By: /s/ Jonas V. Anderson

10 Jonas V. Anderson, Esq.
11 United States Department of Justice
12 Attorney for the United States Trustee
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RULE 9021 DECLARATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the Court's ruling and that:

- The court has waived the requirement of approval under LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion.

I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

APPROVE / DISAPPROVE	
<p>CHRISTOPHER G. GELLNER, ESQ. 528 SO CASINO CNT BLVD, SUITE 305 LAS VEGAS, NV 89101</p>	
<p><i>Attorney for Debtor</i></p>	

I certify that this is a case under Chapter 7 or 13, that I served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

I declare under penalty of perjury that the foregoing is true and correct.

By: /s/ Jonas V. Anderson
Jonas V. Anderson, Esq.
United States Department of Justice
Attorney for the United States Trustee